This question involves other, subsidiary questions:

(1) Whether the district court correctly held that the rules were not reasonable as required by Section 1(14)(a) of the Interstate Commerce Act.

(2) Whether the district court correctly held that the Commission's order was not supported by adequate findings and substantial evidence.

SUMMARY OF ARGUMENT

I. The history of the car service rules and Section 1(14)(a) of the Interstate Commerce Act, 49 U.S.C. § 1(14)(a), shows that neither the rules nor the statute were intended to deal with problems of car supply and ownership. The Commission concluded that mandatory observance of Car Service Rules 1 and 2 will act as an incentive to increase the ownership of freight cars by the railroads. The various steps in the Commission's analysis are not properly related to adequate findings nor are they supported by substantial evidence. Other methods are available to accomplish the Commission's objectives.

The Commission was required to make specific findings as to car shortages on individual railroads and of their financial capacity to acquire more equipment. In the absence of such findings, there is no basis for believing the Commission's action will achieve its objective of increasing car supply. If the *raison d'etre* of the Commission's regulatory scheme is frustrated, the mandatory observance of the rules is not reasonable.

The Commission also failed to make proper and adequate findings from the substantial evidence of record that mandatory observance of the rules would have an adverse financial impact on the shipping public. The opposition to these rules from the primary beneficiaries of any increase in car supply is indeed significant.

The Commission's summary reversal without careful analysis of the examiner's recommended report and order

was improper. The examiner carefully reviewed and analyzed the evidence of record and concluded that the prescription of the rules for mandatory observance was not reasonable. The Commission failed to properly explain its reversal of the examiner.

II. The Commission also failed to develop a comprehensible standard of enforcement of the rules. The rules would expose persons subject to them to criminal liability when total compliance is neither expected nor possible. Aware of this problem, the Commission established exceptions procedures as an afterthought which were unsupported by substantial evidence or reasoned findings. Similar procedures had previously been rejected by the examiner as dilatory and inflexible.

ARGUMENT

I.

THE DISTRICT COURT CORRECTLY FOUND THAT MANDATORY OBSERVANCE OF CAR SERVICE RULES 1 AND 2 WAS NOT REASONABLE AND THE COMMISSION HAD FAILED TO MAKE CERTAIN NECESSARY FINDINGS.

A. The Code of Car Service Rules and The Esch Car Service Act Were Developed To Deal With Car Distribution.

The Interstate Commerce Commission prescribed the car service rules at issue in the belief that this action would increase the aggregate number of cars owned by the railroads and available to shippers.[1] The Commission and the appellants believe that this action will only incidentally improve

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[1]As used in the remainder of this brief, car supply is defined as the aggregate number of cars owned by all railroads and available for use by shippers. Car distribution is defined as the location of cars at proper time and place when the need for them arises. Of course, both are essential to meet the needs of commerce but the distinction should be kept in mind.

the distribution of the existing car fleet (J.S. App. 65, Br. 17, 24). One principal error of the Commission, which the district court grasped, is its persistence in the erroneous belief that both the statute it is relying on, and the car service rules prescribed under its authority, will serve to improve car *supply* when they were only ever intended to improve car *distribution*.

A careful reading of the Commission's decision in *Car Supply Investigation*, 42 I.C.C. 657 (1917), shows that, in spite of its name, the problem confronting the Commission at that time was distribution, and not supply, of cars in the emergency situations created by World War I. Parts of the nation, such as the Northeast and the Atlantic seaboard, had an over abundance of cars, while other parts, such as the Middle and Far West, were suffering from a great deficiency (42 I.C.C. at 661). The cause was not inadequate ownership by the railroads of sufficient cars, either in the aggregate or individually, but ". . . unprecedented traffic, lack of adequate yard, trackage, warehouse and elevator facilities, insufficient motive power . . ." and many other causes, some beyond the railroads' control (42 I.C.C. at 668).

It is clear that the car service rules developed by the railroads and then prescribed by the Commission were intended to deal with an overwhelming problem of car distribution and not supply. Later, as the Government's brief points out (Br. 20-21), the Commission asked Congress to remove any doubts as to its statutory authority to prescribe such rules in order to deal with the distribution problem. See also Interstate Commerce Commission, *31st Annual Report*, pp. 61-68 (1917). Congress responded by enacting the Esch Car Service Act of 1917.[2] There is no indication in any of the

[2] 40 Stat. 101. The 1917 Act enacted only the first sentence of the present Section 1(14)(a). The remainder of the Section was added by Pub. L. 89-430, 80 Stat. 168 (1966). This was done at the request of the Commission (See *78th Annual Report*, pp. 63-64 (1964) and *79th Annual Report*, pp. 92, 116-117 (1965)), to enable it to prescribe incentive per diem charges for car hire. While this part of the statute was enacted as an attempt to deal with car supply

legislative history relied on by the appellants that the Esch Act was ever intended to deal with any problem other than car distribution, the problem then confronting Congress and the Commission.

The League and the other appellees are not here challenging the general authority of the Commission to prescribe rules, regulations and practices with respect to car service which are reasonable. What is challenged is the Commission's action in prescribing mandatory observance of Car Service Rules 1 and 2 of the AAR's Code under the authority of Section 1(14)(a) when neither the statute nor the rules were intended to deal with car supply or ownership. The Commission's action is unreasonable and beyond the scope of Section 1(14)(a) as enacted in 1917.

B. The Commission's Conclusion That Car Service Rules 1 And 2 Will Increase Car Ownership Was Without A Rational Basis And Was Unsupported By Substantial Evidence.

The contention by the appellants that there is a rational basis for the Commission's belief that mandatory observance of Car Service Rules 1 and 2 will compel the railroads to acquire more freight cars is without merit. The Commission's five-step logical exercise is conclusory and assumes the truth of the very proposition it purports to justify. And, in addition, the various steps in the progression are not supported by adequate findings or substantial evidence.

First of all, for example, contrary to the appellants' assertion that car shortages are caused by the low percentage of cars on their owners' lines, the Commission's own witness testified:

(Ibid.), the fact remains that the original part of Section 1(14)(a), unchanged in 1966, was designed for an entirely different problem. The language added in 1966 relates only to that part of the original section which dealt with the compensation to be paid for car hire. See H. Rep. 1183, 89th Cong. 2nd Sess. (1966).

> "Dislocation of box cars to the point where the vast majority are off owners' lines is not, of course, a cause of national car shortages, but rather a result of such conditions." (V.S. 3, p. 110; App. 175)

The witness then went on to state that this situation creates severe car distribution problems as various railroads try to meet the needs of on-line shippers.

At another stage in its analysis the Commission asserts that because of the low percentage of owned cars on line, there is little incentive for the railroads to purchase cars when the beneficiaries are other lines (J.S. App. 55). This assertion in turn is based solely on a conclusory statement of only one witness, totally unsupported by any substantial evidence (V.S. 3, p. 111; App. 176-177). With respect to any and all other evidence presented which might support the mandatory observance of the rules, the examiner, who had the opportunity to review the evidence in detail and who conducted the hearings at which the witnesses were cross-examined, stated his views on the validity of such evidence and the competence of the witnesses as follows:

> "In many instances an attempt is made to support the proposed regulation or rule by an exhibit but in some instances no evidence is offered. The exhibits are generally based on reports from field agents who were instructed to seek evidence concerning so called bad practices to be used in support of the various proposals. To say that this method of gathering evidence does not produce a representative showing is a gross understatement. As a matter of fact it goes beyond a statistical bias to such an extent as to be completely weighted against the respondents and in support of a proposed regulation or rule. Or as one witness stated, the bad practices only were shown because it was assumed that respondents would present evidence relative to good practices.
>
> The proposed regulations and rules were composed with a principal aim in mind, the most expeditions [sic] return of freight cars to owners whether they

> want them or not. These rules necessarily affect relations between and among rail carriers and their shippers, or with carriers using competitive modes of transportation. These relations would embrace one or more of the following subjects: per diem, economics, marketing, traffic, statistics, finance, accounting, export or import trades, and law. The witnesses for the Bureau of Operations claim no expertise or education in such fields of knowledge, and did not ask qualified personnel in the Commission to evaluate their proposals in order to discover whether they would produce sound or lawful results. Despite the inability of the witnesses to stand cross-examination concerning the impact of the proposed regulations and rules on the respondents or shippers in relation to the foregoing subjects, the Bureau of Enforcement on brief urges that such proposals be made manditory [sic] by the Commission." (H.Ex. 23; App. 28-29)

The Commission could find no support for its belief that Car Service Rules 1 and 2 will improve the supply, as distinct from the distribution, of cars. For example, the appellants point out that a witness on behalf of the League agreed on cross-examination that the car service rules would improve car distribution between various regions of the country (Brief, p. 11; Tr. 5603-5604; App. 149-150). But this certainly cannot be characterized as support for the idea that the rules will do anything to improve car ownership.

As indicated in the appellants' brief, the Commission has acted in other proceedings to encourage the prompt return of cars to their owners.[3] The need for using the car service rules to accomplish the same objective, but with the unnecessary additional creation of confusion, delay and inflexibility has not been shown by the Commission.

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[3] *Incentive Per Diem Charges–1968*, 337 I.C.C. 183 and 217, sustained on review *sub nom. Long Island R. Co. v. United States*, 318 F.Supp. 490 (E.D. N.Y.), and reversed and remanded in *Florida East Coast Ry. Co. v. United States*, 322 F.Supp. 725 (M.D. Fla.), appeal pending in this Court, No. 70-279.

The Commission also prescribed in this proceeding a so-called car-ownership formula based on the so-called interline car-day formula. The stated purpose of this formula is to develop information as to the adequacy of the ownership of all the various types of cars by each railroad supplying information. Then each individual railroad will be able to determine with more certainty its needs for acquisition of particular types of cars (J.S. App. 81-87).[4] Given the existence of the car-ownership formula, whose prescription is unchallenged here,[5] the imposition of Car Service Rules 1 and 2 on the railroads, with its attendant extra expense and delay for both carriers and shippers is unnecessary. The same information as to ownership needs can be developed from the data supplied by the application of the formula without the need for using car service rules in an inflexible and dilatory manner.

Perhaps realizing the substantial deficiencies in the record evidence in support of the mandatory observance of the car service rules, the appellants have gone outside the record to Congressional materials to try and shore up their case. But the significance of this material is doubtful. Some, if not all, of it appears to be directed to problems of car distribution, as shown by the testimony of a witness for the Kansas City Board of Trade quoted by the appellants (Brief, page 26).

The Commission did not have any rational basis nor any substantial evidence in the record to support its conclusion that mandatory observance of Car Service Rules 1 and 2 would provide an incentive for new acquisitions of cars.

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[4] It is significant that the Commission admits in its report that it is unable to make any findings on this record as to shortages of freight cars on any single railroad (J.S. App. 84). See *infra* pp. 9-11.

[5] It was challenged in *Florida East Coast Ry. Co. v. United States*, 327 F.Supp. 1076 (M.D. Fla., 1971), but the court held that judicial review of the formula was premature (J.S. App. 196-197).

C. The District Court Correctly Held That It Was Necessary For The Commission To Make Specific Findings Of Car Shortage On Individual Railroads And Of Their Financial Capability To Acquire New Equipment.

The League has shown that the Commission's idea in Ex Parte No. 241 was to take car service rules designed to improve car distribution and prescribe them under a statute passed by Congress with the same problem in mind (*supra*, pages 3-5). But the Commission's purpose here was to increase car ownership. The Commission should certainly not be prevented from making imaginative use of the Esch Car Service Act of 1917 in an attempt to solve the car service problems of the 1970's. But in taking such initiatives, the Commission should not neglect the requirements of the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

The whole basis for the Commission's action in prescribing Car Service Rules 1 and 2 is the proposition that *some* railroads own enough cars to meet the needs of shippers on their lines, while other railroads do not (J.S. App. 65-66). The Commission apparently hopes that if there are such car-deficient railroads, mandatory observance of the car service rules will create a better source of quantitative information about their ownership for such railroads. Beyond that, the Commission hopes its action will compel any individual railroads with a deficiency to acquire equipment sufficient to meet the needs of on-line shippers (J.S. App. 65-66).

However, as the district court correctly held, the Administrative Procedure Act requires the Commission to make a finding that some railroads were deficient in their car ownership before it decided to prescribe the rules at issue. Such a finding is necessary to support the Commission's conclusion that, apart from any other consequences, mandatory observance of the rules will incidentally improve utilization of cars "... insofar as return loading is compatible with the primary objective of increasing availability of cars to the owner." (J.S. App. 65). But if owner lines have a sufficient

number of cars on hand to meet the needs of on-line shippers, utilization will not be improved. Conversely, railroads who need the cars will be deprived of their use because they would have to send them to railroads who do not require them. Consequently, a finding by the Commission that car owning lines in fact needed their cars is essential to support a conclusion that the rules will act to improve utilization, rather than aggravating an existing problem of distribution.

It should be kept in mind, however, that the Commission's primary objective was to increase car ownership, and only incidentally improve car utilization (J.S. App. 65).

The appellants believe that the passage quoted from the decision of the district court in Florida supports the proposition that a specific finding of ownership deficiencies on some railroads was not necessary.[6] Even if this is correct, the Florida court upheld the rules on a basis other than that relied on by the Commission and advanced by it here. The Florida court obviously views the rules as a means of dealing with a problem of car *distribution*. That court said that the question was whether or not cars should be distributed to their owners for their use in times of car shortage (J.S. App. 201). The Commission states here that the question is whether or not it may use the rules to compel the railroads to purchase more cars, a question the Florida court never reached (J.S. App. 200-201).

The district court also held that the Commission should have made a finding of "... the capacity of the railroad industry to absorb new freight car capital expenditures." (J.S. App. 20-21). The appellants contend such a finding is unnecessary, but, to the contrary, it is even more vital than the other specific finding the court held was necessary. If the Commission's proposal is to succeed in its objective of increasing car ownership, then some indication of the probability that the financially weak railroad industry could meet

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[6]Brief, pp. 28-29. The decision is reported at *Florida East Coast Railway Co. v. United States*, 327 F.Supp. 1076 (M.D. Fla. 1971).

the requirements is essential. If the railroads are unable to generate the resources to acquire more cars, then the car supply problem remains unsolved. But the restrictions on loading operations, delays, extra switching and additional expense dismissed by the Commission as inconsequential (J.S. App. 67) would become a burden unameliorated by the hoped-for but nonexistent benefits of a solution to the car supply problem.

In arguing that the findings required by the district court are unnecessary, the appellants are in effect saying that they do not involve a material issue of fact. The League submits that this is not the case. The existence of ownership deficiencies on certain railroads and their financial capacity to remedy them are essential pieces in the Commission's regulatory ensemble. Therefore, they are a ". . . material issue of fact . . . presented on the record." Section 8(b) of the Administrative Procedure Act, 5 U.S.C. § 557, requires the Commission to make adequate findings on such issues, and this it has not done.

D. The District Court Correctly Found The Rules Were Not Reasonable Because Of Their Adverse Financial Effects On The Shipping Public.

The Government's brief has largely ignored the district court's ruling that the rules are unreasonable because the Commission failed to properly consider the financial effects on the shipping public. Substantial and probative evidence was placed in the record by the shipper parties to the Commission proceeding. For example, a witness for the League submitted this testimony:

> "Certainly the Commission would not adopt Car Service Rules so rigid as to prevent the free flow of commerce by railroad. At the local level the carrier and shipper are in the best position to adapt themselves to car shortage conditions. Extreme differences may apply among the thousands of shipping points throughout the nation. No single rule or rules

can be expected to meet the conditions unique to the various shipping origins and destinations." (R.V.S. 76, p. 3; App. 300)

The hearing examiner, after carefully reviewing the evidence, concluded that prescription of the rules would "produce numerous effects harmful to the carriers and the shipping public." (H. Ex. 43; App. 49).

It is most significant that the shipping public, which presumably would have the most to gain from an improved car supply, is almost uniformly opposed to the mandatory observance of Car Service Rules 1 and 2. No shippers or shipper representatives intervened in support of the Commission's order, either in this case or in the Florida action (J.S. App. 13, 185). This opposition to the rules from groups whose interest are generally diametrically opposed to those of the railroads is, we submit, highly indicative of the unreasonableness of the Commission's scheme of regulation.

E. The Commission's Handling Of The Examiner's Recommended Report And Order Was Improper.

The district court noted the hearing examiner's conclusion that the imposition of mandatory car service rules "... would be of substantial detriment to rail carriers and shippers." (H. Ex. 27; App. 33).[7] The Commission's summary dismissal of the admittedly "strenuous" objections of the shippers to the proposed rules should be contrasted with the examiner's careful analysis in his report, on two separate occasions, of the proposals made, the evidence presented on them and his reasoned conclusions thereon (H. Ex. 23-27, 40-43; App. 28-33, 46-49). In concluding his specific discussion of the present Car Service Rules 1 and 2, the examiner said:

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[7]The appellants noted some other areas of disagreement between the examiner and the Commission (Br., p. 31), but these dealt with matters other than Car Service Rules 1 and 2.

> "In other words, prescription of such rules, or any other car service rules which are duplicative of the present AAR rules, has not been justified by any evidence which is persuasive that such prescriptive orders would produce improvements in car supply or utilization. On the contrary, for the reasons stated in connection with Proposal II, prescriptive orders which are issued for the sole purpose of making car service rules mandatory produce numerous effects harmful to the carriers and the shipping public." (H. Ex. 42, App. 48-49).

Even judged by the standards of *Greater Boston Television Corp. v. Federal Communications Commission,* 444 F. 2d 841 (D.C. Cir., 1971) cert. den., 402 U.S. 923, a case relied on by the appellants, the Commission's treatment of the examiner's recommended report and order is deficient. Immediately following the passage they quote, the court noted:

> "Here, the Commission accepted the Examiner's findings and conclusions to a substantial degree; and when it did not, the Commission made clear not only its awareness of what the Examiner had concluded, but also its reasons for taking a different course."

In this case, the Commission's decision is blissfully unaware of the examiner's contrary conclusions on the need for Car Service Rules 1 and 2, provided no justification from the record for reaching a different conclusion[8] and noted simply that: "Our conclusions differ in part from those recommended [by the examiner]." (J.S. App. 28-29).

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[8]Cf. *Universal Camera Corp. v. N.L.R.B.,* 340 U.S. 474, 494-95 (1951).

II. THE DISTRICT COURT PROPERLY FOUND THE RULES UNREASONABLE FOR LACK OF A COMPREHENSIBLE STANDARD OF ENFORCEMENT.

It is clear that the district court was troubled by the enforcement provisions of the Commission's proposed regulations on car service, although it perhaps did not clearly articulate the basis for its disapproval. To clarify this matter, a certain amount of background is desirable.

First of all, assuming that Car Service Rules 1 and 2 were in effect, the Commission would have several methods available to enforce them. First, Section 1(17)(a) of the Interstate Commerce Act, 49 U.S.C. §1(17)(a)[9] provides that violation by a railroad or its agents and employees of the Commission's car service regulations shall be punishable by fine collected by civil forfeiture proceedings.

Section 10(1) of the Act, as amended, 49 U.S.C. §10(1), provides that a violation of the Act or anything required to be done by the Act[10] is a misdemeanor punishable by a fine upon conviction. Section 1 of the Elkins Act, 49 U.S.C. 41(1), also provides for criminal penalties for such violation.[11]

During the hearings before the examiner, the witnesses for the Commission took the view that only 80% compliance would be considered "a general good-faith attempt to comply" with the rules (Tr. 1572, App. 107). The examiner found that, in general, the proposed enforcement of the rules with "strictly controlled flexibility" and the expectation of 80% compliance did not provide "a comprehensible standard of enforcement." (H. Ex. 24, App. 30).

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[9]Enacted as part of the Esch Car Service Act in 1917, along with Section 1(14)(a), 40 Stat. 101.

[10]Presumably this would include anything required by the Commission, which is created by the Act.

[11]Whether or not shippers could be held liable under the Elkins Act for soliciting violations of the Commission's regulations, shippers could still be liable as aiders and abettors under the other statutes, Section 1(17)(a) and 10(1).

After the Commission acted to prescribe the rules in its report and order entered August 21, 1969, numerous parties filed petitions for reconsideration. Among them was one filed by the Association of American Railroads, an appellee here. The AAR opposed the mandatory rules, but, in the alternative, proposed a new Rule 19, as follows:

> "Exceptions to these rules for the purpose of further improving car supply and utilization, increasing availability of cars to their owners, improving the efficiency of railroad operations, or alleviating inequities or hardships, may be authorized by the Chairman of the Car Service Division, Association of American Railroads. Such exceptions as are authorized by said Chairman shall be filed with the Bureau of Operations, Interstate Commerce Commission, and shall be subject to suspension or cancellation by the Commission." (AAR Pet. for Recon. p. 89; App. 340)

Given the admitted need for flexibility in administering the rules, this proposal was cumbersome and dilatory, and would be unduly restrictive until enough exceptions were created to permit the required flexibility. A similar proposal by the Commission's Bureau of Operations[12] for obtaining exceptions from the AAR's Car Service Division subject to approval by the Commission was rejected by the examiner on these grounds (H. Ex. 40-41; App. 47-48).

No mention was made of the procedure rejected by the examiner in the decision of August 21, 1969. In its Order of February 18, 1970, the Commission prescribed a new Rule 19, unlike any proposed before, which provided for obtaining exceptions from the Commission's Bureau of Operations (J.S. App. 171-172).[13] In the absence of the exceptions procedures finally adopted, the enforcement of the

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[12]Note C to Car Service Rules 1, 2 and 3. (V.S. 3, Appendix A, p. 3).

[13]Rule 19 is applicable to all the prescribed rules, not just Rules 1 and 2.

Car Service Rules might be improper on the grounds they are too vague, as the district court noted (App. 25). But the more fundamental flaw pointed out by the district court is the lack of an "ascertainable standard of guilt," which makes the Car Service Rules unreasonable within the meaning of Section 1(14)(a) (ibid.).

The appellants' brief takes the position that even without the exceptions, criminal intent would have to be proved to impose criminal penalties, relying on *United States v. Southern Railway Co.*, 250 F. Supp. 759 (D. S.C. 1966). While that case could perhaps be read as supporting that proposition, it should be noted that the proceeding was a civil forfeiture under Section 1(17)(a) and not a criminal prosecution. Furthermore, such a principle would conflict with the long-established principle that criminal intent is not an essential element for conviction of a violation of a regulatory statute. See *Armour Packing Co. v. United States*, 209 U.S. 56, 85-86 (1908).

The exceptions procedures themselves, particularly with respect to Rule 19, were prescribed by the Commission without any support in the record and without adequate findings to justify them. The Commission apparently added these exceptions procedures in the belief they would avoid the problem of a comprehensive standard of enforcement. But the Commission has not complied with the Administrative Procedure Act in grafting these procedures onto the Car Service Rules. The Act requires reasoned findings and careful analysis to justify the choice the Commission has made in this matter, *Burlington Truck Lines v. United States*, 371 U.S. 156, 167 (1962). The Commission has not done so.[14]

In addition, the Commission has not properly justified its subsequent approval of exceptions procedures in Rule 19

[14]The only reference made to the procedures is a brief paragraph in the February 18, 1970, order noting that such procedures appear to be necessary.

similar to those rejected earlier by the examiner as dilatory and rigid (H. Ex. 40-41; App. 47-48). The standards established by *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 853 (D.C. Cir., 1971) have not been satisfied.

CONCLUSION

Appellees are not disputing the delegation by Congress to the Commission of authority to deal with the problem of car supply, in Section 1(14)(a) of the Interstate Commerce Act. Nor are they disputing the proposition that a reviewing court may not substitute its policy choice for the course chosen by an agency acting pursuant to authority delegated by Congress. But given the sweeping discretion awarded to the Commission to exercise its expertise in this area, appellees contend that the Commission is required by the Administrative Procedure Act to clearly justify and properly support the choice of remedies it has made. A passage from *Burlington Truck Lines v. United States, supra,* at 168 also illuminates the problems presented by the Commission's report and orders here:

> "The agency must make findings that support its decision, and those findings must be supported by substantial evidence. [citations omitted] Here the Commission made no findings specifically directed to the choice between two vastly different remedies with vastly different consequences to the carriers and the public. Nor did it articulate any rational connection between the facts found and the choice made."

In addition, Section 1(14)(a) requires that regulations thereunder must be reasonable. The Commission has developed here a scheme of regulation that cannot meet that standard.

For all of the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

John F. Donelan
Frederic L. Wood
914 Washington Building
Washington, D.C. 20005

Counsel for Appellee, The National Industrial Traffic League

Of Counsel:

Donelan, Cleary
and Caldwell
914 Washington Building
Washington, D.C. 20005

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION,
Appellants,

v.

ALLEGHENY-LUDLUM STEEL CORPORATION, ET AL.,
Appellees.

On Appeal from the United States District Court for the Western District of Pennsylvania

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BRIEF FOR APPELLEES ALLEGHENY-LUDLUM STEEL CORPORATION, ET AL.

MAX O. TRUITT, JR.
SALLY KATZEN
GILBERT C. BERKELEY, JR.

WILMER, CUTLER & PICKERING
900 - 17th Street, N. W.
Washington, D. C. 20006

Counsel for Appellees Allegheny-Ludlum Steel Corporation, et al.

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